

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	I.D. No. 0405017780
)	
JEROME SULLINS,)	Supreme Court No. 216, 2008
)	
Defendant,)	
)	

OPINION ON REMAND¹

Appearances:

Jerome Sullins, Pro Se, Delaware Correctional Center, 1181 Paddock Road,
Smyrna, Delaware, 19977

James T. Wakley, Esquire, Department of Justice, 820 N. French Street,
Wilmington, Delaware, for the State.

Judge John E. Babiarz, Jr.

Date: April 20, 2009

¹ The Delaware Supreme Court has not published its order remanding the case to this Court. The Order is attached to this opinion as an appendix. *Sullins v. State* Del. Supr., No. 216, 2008, (February 2, 2009).

In April 2006, Jerome Sullins was convicted of a variety of drug offenses including trafficking in cocaine. He had previously been tried on the same charges, but that trial ended in a mistrial.² Sullins' conviction was affirmed by the Supreme Court³ and he thereafter filed a motion for post-conviction relief under Criminal Rule 61. He alleged ineffective assistance of counsel in several respects and legal error. The Court found his claim of legal error meritorious and vacated a conviction for possession of cocaine because it had merged into the trafficking conviction. In all other respects the motion was summarily denied.⁴

On appeal the Supreme Court affirmed this Court and refused to consider claims not made by Sullins in the Superior Court, but remanded the case for further consideration on one issue. The Supreme Court found that after considering Sullins "two-and-a-half pages of argument in his opening brief" and giving those arguments their:

"broadest reading he seems to contend that the search of his home by Wilmington police accompanied by probation officers, was illegal because officers did not independently determine the reliability of information

²The remand order erroneously states that this Court granted the mistrial *sua sponte*, *op.cit.* at p.2. However, in its opinion affirming Sullins conviction, the Supreme Court specifically found that "the mistrial was declared at Sullins' urging" which was a necessary predicate to the affirmance of this Court's granting a mistrial. *Sullins v. State*, *infra* at p.916.

³*Sullins v. State* 930 A2d 911 (Del. 2007).

⁴*State v. Sullins*, Del. Super, ID0405017780, Babiarz, J. (April 25, 2008).

provided by the State Police Detectives’
confidential informant...”⁵

In support of that construction of Sullins’ motion and brief, the Supreme Court cited its decision in *Culver v. State*, decided August 5, 2008.⁶ It remanded the case to this Court to expand the record by obtaining affidavits of Sullins’ defense counsel in response to the “specific allegation that counsel was ineffective for failing to file a motion to suppress based on an illegal warrantless search.”⁷ Sullins had different counsel for his first aborted trial and his second trial. Both have filed affidavits.

Without reference to the expanded record, this Court notes that *Culver*, on which the Supreme Court relies in its remand, was not decided until over two years after Sullins’ conviction and three years after his first trial. This Court cannot find that counsel was ineffective in not filing a motion to suppress evidence based on a Supreme Court decision not then in existence. Furthermore, nothing in Delaware jurisprudence foreshadowed *Culver*, and the decision itself had two dissenters. Thus there is no basis for concluding that counsel should have anticipated the *Culver* ruling.

Logically, the Court’s inquiry ends there. However, for the sake of

⁵*Sullins v. State*, De. Supr. No. 216, 2008 at p4.

⁶956 A2d 5 (Del. 2008).

⁷*Sullins v. State*, Del. Supr. No. 216, 2008 p6.

completeness, the Court must also note that the *Culver* ruling was not applicable in this case. In *Culver* the Supreme Court held that “probation officers must independently assess the reliability of information provided by police officers before conducting a warrantless search of a probationer’s home.”⁸ Here a police officer listened in on a conversation between a confidential informant and the defendant concerning a drug transaction.⁹ That information was turned over to Wilmington Police and officers of the Department of Probation and Parole as Sullins was on Level 3 probation at the time. The search conducted by Probation Officers was thus based on first hand information supplied by a police officer. The *Culver* ruling, even if it existed, was not violated.

The conclusion reached in its opinion of April 25, 2008 remains unchanged.

Judge John E. Babiarz, Jr.

JEB,Jr./bjw
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⁸Ap. Cr. P4 fn6.

⁹Transcript, *State v. Sullins*, February 15, 2005, pp52-54.